IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Maniram Vs. LRs of Sheokaran
S.B. CIVIL FIRST APPEAL NO.169/2001

Against judgment and decree dated 28.03.2001 passed by Addl. District Judge No.1, Hanumangarh in Civil Original Suit No. 64/1998 – Sheokaran Vs. Maniram.

DATE OF PRONOUNCEMENT OF JUDGMENT :: 23RD February, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. B.N. Kalla & Mr.B.L.Sharma for appellant.
Mr. S.K. Mathur for respondent.

BY THE COURT:

Judgment & decree dated 28.03.2001 passed by Addl. District Judge No.1, Hanumangarh in Civil Original Suit No. 64/1998 (Sheokaran Vs. Maniram), allowing the suit filed by respondent-plaintiff is the subject matter of challenge in this appeal filed by appellant-defendant under Sec.96 CPC.

The background facts of the case are

that respondent-plaintiff filed a suit seeking decree for specific performance of the contract inter-alia stating that defendant entered into an agreement for sale of 10 bigha agricultural land situated in Chak 14 ZWD, Tehsil Suratgarh for a consideration of Rs.37,500/- on 23.12.1975 and after receiving the agreed sum handed over the possession of the land to the plaintiff but as the instalments in respect of the land allotted to the defendant were due at the time of sale agreement, it was agreed between the parties that if the defendant failed to get the registry done in favour of the plaintiff, the plaintiff would get it done in his favour and if the land allotted in favour of defendant cancelled, then the defendant would refund the amount to the plaintiff so received. Thereafter, it is said that on making payment of due instalments the defendant acquired the Khatedari rights in the land in question but did not get it registered in favour of the plaintiff so he gave a notice to defendant on 22.10.1988 but the defendant disagreed. The specific stand of the plaintiff was that when the land was given in possession

to the plaintiff after entering into an agreement, the land was unfertile having no irrigation facility and was not suitable for agricultural purposes so he investing his hard labour and money developed it but as the market rates of land increased the defendant changed his heart and committed breach of contract. It is stated that the defendant did not make any effort to deposit the instalments and get the permission of sale rather purposely did not deposit the instlaments and as a result thereof the allotment was cancelled and in such circumstances the plaintiff was unable to get the land registered in his favour. It is further stated that the allotment of land in favour of defendant was cancelled in the year 1975 but the cancellation of the same was revoked in the year 1988 and Khatedari patta was issued in favour of defendant even then he took no steps for getting the sale permission and kept on assuring him that he would get the land registered in favour of plaintiff for which he was always ready to bear the stamp and registry expenses. It was prayed inter-alia that the land in question be got registered in

favour of the plaintiff or in alternate the amount Rs.37,500/- paid to the defendant be got refunded with compensation of Rs.20,000/-. It was also prayed that the defendant be directed to get the sanction in respect of sale of the land from Collector and to execute the sale-deed and on his failing to do so the sale deed be got executed through Court and registry be got attested.

Defendant filed his written statement and stated that at the time of agreement he was not having any Khatedari rights in the land as the land allotted was for temporary cultivation and that did not create any right of ownership. It was also stated that on account of non-payment of the instalments the allotment of the land was cancelled and the plaintiff cancelling the transaction of sale handed over the possession back to the defendant in the year 1986 and the possession of plaintiff at the time of filing of suit was of trespasser. It was emphasized that some of the terms of the agreement, in the circumstances mentioned, were legally not enforceable and were void and as

per the terms of the agreement it was agreed between the parties that in case of cancellation of allotment for some reason the defendant was liable to pay only Rs.37,500 to the plaintiff back. The averments made in plaint regarding improvement of the land or the same being unirrigated were denied and it was claimed that the land was being used for agricultural purposes from the period prior to 1970 and two crops were used to be taken in a year. Though it was accepted that the land price in the area had increased but the allegation of breach of contract was denied and it was stated that as the land stood cancelled on account of non-payment of instalments, the transaction of sale was cancelled by the plaintiff and he pressurized the defendant for paying back the amount paid. It was specifically denied that the defendant ever assured the plaintiff that he would get the 'Sanad' after depositing the instalments and execute sale deed in favour of plaintiff as at the time of agreement to sale the condition of the defendant was not such that he could deposit the instalments and as per the

agreement as the land allotted in favour of defendant cancelled, the agreement itself came to an end. It was pleaded that the land was not cancelled in the year 1975 but it was cancelled in Feb 1986 and was restored in May 1988. It is said that the plaintiff in the changed circumstances filed the suit with ulterior motive in order to satisfy his greed on false averments even after the agreement having come to an end and as such the suit not being maintainable is liable to be rejected. Taking some more grounds for not subsisting the suit it was also stated that under the provisions of Sec.41 of Rajasthan Tenancy Act only the Khatedar tenant can sell or agree to sale the land and on the date of agreement neither the defendant was Khatedar tenant of the land in question, nor there was permission of the Collector under Sec.13 & 13A of the Colonization Act and as such the agreement itself was void. Objection was raised in respect of limitation for filing the suit and it was stated that the suit was barred by limitation and was not enforceable in law. In addition to other objections, the defendant

stated that the plaintiff in the last 10 years has taken benefit of crops amounting to Rs.70,000/- and taking into consideration the principal amount of Rs.37,500 and interest thereon Rs. 37,000 total Rs.75,000/- the defendant was required to pay Rs.5,000/- to the plaintiff as was decided by the Panchayat and agreed to by both the parties to settle the matter but as the defendant was not having Rs.5,000/- with him at that time, the Panchayat allowed the plaintiff to take two crops from the lands and directed the plaintiff to handover the possession of the land after that but after taking possession of the land on the pretext of taking two crops the plaintiff did not return the possession ill-intentionally and remained in possession of the land as trespasser so also with a view to davour the land of defendant he filed the suit. Plea of estoppel was also raised in view of decision of the Panchayat and it was submitted that the land was already mortgaged with the State Bank of Bikaner & Jaipur and in such circumstances the plaintiff was not entitled to get relief of specific performance of contract and could only

proceed to recover the amount paid. The defendant prayed for dismissal of the suit with special costs.

On the aforesaid pleadings of the parties, the trial Court framed the following issues:

1.Whether the plaintiff was always ready and willing to perform the contract of sale?

2.Whether the sale agreement dated 23.12.1975 stood cancelled on account of cancellation of the allotment and the plaintiff was entitled to receive only Rs.37,500 from the defendant?

3.Whether as per the decision of the Panchayat as mentioned in Para 20 of the written statement the possession of the land was again given to the plaintiff for taking two crops in order to adjust the amount of Rs.5,000? If so proved, what is its effect on the suit?

4.Whether the sale agreement not being regular under Sec.13A of the Rajasthan Colonization Act is illegal and is not changeable?

5.Whether the plaint of the plaintiff is barred by limitation?

6.Relief?

Both the parties before learned trial Court, adduced oral as well as documentary evidence in support of their contentions. The learned trial Court considering the contentions of learned advocates for both the parties, came to the conclusion that the plaintiff was entitled to decree for specific performance of the contract and directed the defendant to get the land in question registered in favour of the plaintiff within a period of two months on his paying the cost of registration, else the Lrs of plaintiff shall have the right to get the land registered in their favour after depositing the expenses of registration in the Court by its judgment dated 28.03.2001. Hence, feeling aggrieved, the present appeal has been filed.

Heard learned counsel for the parties and perused the material available on record.

In the present case, following points require consideration:

(1) Whether the plaintiff-respondent was always ready and willing to perform his part of contract and time was not the essence of the contract?

(2) Whether on account of cancellation of allotment and subsequently restoration of it, the suit filed for specific performance was liable to be decreed?

(3) Whether on account of permission in relation to sale of the land in dispute having not been obtained, the agreement to sale entered between the parties was not liable to be enforced?

(4) Whether the trial Court has correctly decreed the suit and the judgment and decree under challenge requires no interference by this Court?

Point No.1:

The contention of the learned counsel for the appellant is that time was the essence of the contract inasmuch as the agreement Ex.1 clearly indicates that in the year 1982 the time was to expire in relation to the agreement

executed between the parties and the suit having been filed in the year 1988 i.e. on 30.11.1988 it was barred by limitation in view of the fact that the time was the essence of the contract.

On the other hand, it has been contended that a perusal of agreement entered into between the parties shows that it was depending on certain conditions and the conditions including that the defendant-appellant was required to obtain necessary permission/sanction for the purpose of sale and it was the option of the plaintiff in case the permission is not obtained or for any reason the allotment made to the appellant-defendant is cancelled to receive back the amount in question paid to the defendant in relation to the land in dispute. It has also been contended that the defendant at the initial stage after obtaining the entire amount in relation to the land in dispute did not take steps for obtaining permission and also failed to deposit the instalment due in order to frustrate the contract and merely because

subsequently the allotment made in his favour was cancelled for not depositing the amount and it was got restored in the year 1988 by paying the amount due in relation to the instalments, then to say that the allotment was cancelled earlier and therefore the contract was not enforceable, cannot be said to be legal, just and proper. In this case, according to the learned counsel, the entire amount having been obtained long back from the plaintiff by the defendant-appellant, thereafter to deny the specific performance is in no manner can be said to be justified and the agreement entered in between the parties was enforceable and the Court has correctly considered the matter of limitation in this case.

I have considered the above submissions made before me. It appears that in Para No.7 of the plaint it has been specifically stated that the allotment made in favour of the defendant-appellant was restored after cancellation in the year 1988. It was also stated that the defendant also obtained tenancy rights in relation to the land in

question but the defendant did not take any step in relation to the part of contract, which was to be performed by him i.e. registry was required to be made in favour of the plaintiff. In this para, the plaintiff-respondent has specifically stated that he was always ready and willing to perform his part of contract as the entire amount was paid to the defendant-appellant in relation to the consideration of the suit land. In reply to Para No.7, the defendant-appellant has not stated a word about the fact that the plaintiff-respondent was not always ready and willing to perform his part of contract but what the defendant-appellant has stated is that on account of the fact that in the year 1986 the allotment was cancelled for the reason that the instalments were not paid and in the year 1988 the allotment was restored, therefore, the plaintiff was entitled to Rs.37500 only. A perusal of Para 7 of the plaint and reply thereof clearly indicates that the factum that plaintiff was ready and willing to perform his part of contract has not been denied. It also appears from the reading of Para No.1 of the plaint and reply thereof filed

by the defendant-appellant that the agreement was executed between the parties and it was agreed upon by the defendant-appellant that the agreement was executed between the parties and it was agreed upon by the defendant-appellant that he will dispose of his land which was to be allotted in future for a consideration of Rs.37500. Thus, the matter which requires consideration is as to whether the suit filed in the year 1988 was time barred or not? As discussed above, the conditions of the sale agreement are clearly indicative of the fact that the part assigned to the defendant was to obtain permission for sale and to do the needful in the matter. It was one of the conditions of the agreement that in case the defendant fails to perform his part of the contract, the contract shall be enforceable through the Court. One other condition of the agreement was that if for any other reason the allotment is cancelled then in that circumstance the plaintiff shall be entitled to receive the amount paid in relation to the suit land and further also a condition was that the defendant shall try to do all the needful upto

30.11.1982. The important aspect of the matter is that this particular document agreement Ex.1 makes a mention that possession was also handed over on 23.12.1975. It is not in dispute in view of the material available on record that possession of the land in question is still with the plaintiff respondent but what appears is that the defendant willfully did not deposit the instalments, which resulted in cancellation of the allotment made in his favour in the year 1986 and he thereafter immediately paying the instalments, got the allotment restored back. The document in this behalf is Ex.4, which says that on 27.02.1986 the allotment made in favour of the defendant in relation to the suit land was cancelled and it was restored on 13.05.1988. This document is not in dispute. The defendant in his evidence has nowhere stated that he made efforts for obtaining permission from the concerned authority. The defendant under the agreement first extracted money from the plaintiff and subsequently when the value of the land enhanced, he wanted that the agreement entered previously for one or other reason should be cancelled or it should

not be acted upon.

In AIR 1964 SC 978 (Mrs.Chandnee Widya Vati Madden Vs. Dr. C.L. Katial &Ors.), the Hon'ble Apex Court on the facts when found that there was a condition entered in the agreement that the vendor shall obtain necessary permission from Govt. for the sale but failed rather withdrew the application made for permission, held as under:

> "The main ground of attack on this appeal is that the contract is not enforceable being of a contingent nature and the contingency having been fulfilled. In our opinion, there is no substance in this contention. So far as the parties to the contract are concerned, they had agreed to bind themselves by the terms of the document executed between them. Under the document it was for the defendant vendor to make the necessary application for the permission to the Chief Commissioner. She had as a matter of fact made such an application but for reasons of her own decided to withdraw the same. On the findings that the plaintiffs have always been ready and willing to perform their part of the contract, and that it was the defendant who willfully refused to perform her part of the contract, and that time was not the essence of the contract, the Court has got to enforce the terms of the contract and to enjoin upon the defendant-appellant to make

> the necessary application to the Chief Commissioner. It will be for the Chief Commissioner to decide whether or not to grant the necessary sanction."

In AIR 1988 Bom. 82 (Sau. Shantabai Vs. Manakchand Rattanchand Raka), on the facts it was found that the plaintiff who was a non-agriculturist had entered into an agreement with the defendant to purchase the agricultural land and for that purpose a permission was required to be obtained by the defendant but the defendant seller did not pursue the matter and the Court in the circumstances held the contract enforceable observing as under:

> "Even assuming that the defendant had made an application for permission, the mere making of the application would not exonerate him from the liability under the contract. He had to pursue and prosecute the application diligently. If the application was unsuccessful he had to give intimation to the plaintiff in that behalf so that both of them could have put their heads together to find the way out. This is what the parties are expected to do to bring about the fulfillment of the contract. The defendant has thus failed to prove that he had done everything in his hand to perform his part of the contract. It can, therefore, be held that the breach was on his

> part and not on the part of the plaintiff."

In 1966 AP 70 (Pasumarti Ramulu Vs. Nuthi Ananha Ramulu), there was an agreement in relation to agricultural land and for that purpose permission was required to be obtained before the registration of the sale deed, however the seller took the plea that the contract was not enforceable in view of the fact that under a condition of the Andhra Pradesh Agricultural Act the seller was required to obtain necessary Govt. permission and unless that condition was fulfilled the specific performance was not possible. The Court after considering the entire matter, observed as under:

> "As there was an express covenant on the part of A to get the permission of the Govt., which obviously referred to the sanction necessary under S.47 of the A.P. Act XXI of 1950, the agreement in explicit terms contemplated a perfectly legal procedure for the execution of the sale deed, after obtaining the sanction for the sale. Therefore, by no means the agreement could be considered invalid. . . . The plaintiff is entitled to a decree requiring the defendant to apply for and if possible obtain the sanction of

> the Tehsildar, for the sale and to execute the sale deed on payment of the balance of consideration by the plaintiff after the sanction is obtained."

In AIR 1990 Delhi 42 (Ajit Prasad Jain Vs. N.K. Widhani & Ors), in view of the fact that there was a condition to obtain permission from the Land Development Officer in relation to sale of immovable property, the Court has observed as under:

> "The permission from Land and Development Office is not a condition precedent for grant of decree for specific performance. If after grant of the decree of specific performance or the contract the Land and Development Office refuses to grant permission for sale, the decree-holder may not be in a position to enforce the decree but it cannot be held that such a permission is a condition precedent for passing a decree for specific performance of the contract. . . . The relief of specific performance is in the discretion of the court which is to be exercised not arbitrarily but on sound principles of law. It is equally well settled that in cases of contracts for sale of immoveable properties the grant of relief of specific performance is a rule and refusal and exception on valid and cogent grounds shown."

Taking into consideration the facts of the present case and the law laid down by the Hon'ble Apex Court and other High Courts, it appears that in the matters of specific performance of contract it is to be seen as to

whether the time is the essence of contract or not and as to whether the contract is enforceable or not? Similar type of matters were considered in the above authorities and it was held that seller cannot back out from the terms and conditions of the contract for the reason that required permission was not obtained or the permission to sale was required to be obtained, which has not been obtained. As per the condition of the agreement, the defendant-appellant was required to intimate the plaintiff in relation to the steps taken by him for obtaining the permission to sell the land which he failed to do. On the contrary, in the year 1986 when the allotment was cancelled then too it was also not communicated and in the year 1988, the plaintiff before filing the suit filed application Ex.4 to find out what was the state of the suit land then it was revealed that in the year 1986 the allotment made in favour of the defendant was cancelled and same was restored in the year 1988 and the suit was filed thereafter. Thus, the contract was enforceable from the date the allotment of the land stood made in favour of the defendant,

and therefore, it cannot be said that the suit was barred by limitation. The limitation in the present case has started only after 1988, the date on which the allotment was restored i.e. May 1988 and in November 1988 the suit has been filed.

In view of above discussion, the answer to Point No.1 is that plaintiff was always ready and willing to perform his part of contract and defendant has not taken the required necessary steps in order to frustrate the agreement and the suit filed was within limitation.

Points No.2 & 3

Points No.2 & 3 are inter-related and as such the same are being disposed of together.

In view of discussions made in relation to Point No.1, it has been found that the suit for specific performance was maintainable and the total amount of consideration for the suit land was Rs.37500. The defendant-appellant received the entire

amount and the suit land also stood allotted in the name of defendant-appellant in the year 1988. The contention of the learned counsel that the agreement entered into between the parties was void in view of Sec.13 of the Colonization Act and at best the plaintiff was entitled to receive a sum of Rs.37500 only. The argument of the learned counsel particularly in the present facts and circumstances of the case is not tenable for the reason that the defendant-appellant purposely tried to frustrate the contract and did not take steps to see that allotment is made in his favour. The defendant failed to pay the instalments, therefore the allotment made in his favour was cancelled in the year 1986 and when he paid the entire instalments the allotment was restored in his favour. On the one hand, the defendant wants that contract should be frustrated and on the other hand he also wants to enjoy the money received long back in the year 1975 in relation to the suit land. As regards the contention of the learned counsel that in view of Sec.13 of the Colonization Act, 1954 that the sale permission

was required and it was not obtained, it is suffice to say that subsequently this rider did not remain in force any further for the purposes of sale. It is also proper to mention here that the learned trial Court while discussing Issue No.4, made specifically in this behalf, has found that in view of amendment brought by way of inserting Sec.13A in the Act of 1954, such transfers were liable to be regularized. A perusal of Sec.13A of the Act of 1954 indicates that it starts with the heading 'Validation of certain transfers and declaration of consent to transfer'. This section is a complete code in itself wherein several type of transfers have been mentioned and it has also been mentioned that in what manner they can be regularized. I do not find any illegality or irregularity in the findings arrived at by the learned trial Court while deciding Issue No.4 which was to the effect that the land in dispute having not been regularized as per the provisions of Sec.13A of the Act, whether the agreement entered between the parties was void? The Court in view of amendment made in the Act and overall facts and

circumstances of the case found that the land subsequently having been allotted in favour of defendant-appellant, it cannot be said that the contract entered between the parties was not enforceable.

In view of what has been discussed here in above, the answer to point No.2 & 3 is that subsequently allotment made in favour of defendant-appellant in the year 1988 in relation to the suit land and non-obtaining the permission by the defendant to sell the suit land to plaintiff will not make the contract of sale unenforceable.

Point No.4:

In view of above discussion and findings recorded in relation to Points No.1 to 3, it appears that an agreement to sale was entered between the parties. The factum of receiving the entire payment in relation to the suit land has not been denied. On the day when the suit was filed, the seller was liable to transfer the land in dispute, time was not essence of the contract and the limitation in

the present matter started when the defendant refused to take steps for getting the registry of the suit land done in favour of the plaintiff and when the suit land stood allotted in the name of the defendant. The trial Court, thus, has correctly considered the issues framed on the basis of evidence adduced by the parties. In the present case, the only document which is having bearing on the case is Ex.1 the agreement, which was entered between the parties. Ex.2 is the Power of Attorney executed by Shyokaran, Ex.3 is a notice, and Ex.4 is the document which shows that on one occasion the allotment was cancelled in relation to the land and subsequently the land was allotted in the year 1988 to the defendant. The contents of Ex.1 having not been denied then it is only a matter of interpretation of the condition stated in the agreement Ex.1. The factum that the land in dispute is in possession of the plaintiff-respondent could not be denied. The plea was taken that Panchayat was held and the matters were settled therefore the present suit filed by the plaintiff was not maintainable. In that regard

the trial Court found that no documentary evidence was brought to prove the issue. This issue has been decided against the defendant.

Thus, in view of above discussions and answers to the points framed by me, I am of the opinion that the trial Court has correctly decreed the suit which requires no interference by the Court.

In the result, the appeal fails and is hereby dismissed with no orders as to costs.

(SATYA PRAKASH PATHAK)J.

/jpa